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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/912,570

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Roberto DeLima

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EXAMINER

PHILLIPS, HASSAN A

ART UNIT

PAPER NUMBER

2151

MAIL DATE

DELIVERY MODE

10/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/912,570

Applicant(s)

DELIMA ET AL.

Examiner

Hassan Phillips

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,8-12,14 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-12,14 and 16-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to communications filed August 6, 2007.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on August 6, 2007 has been entered.

#### ***Drawings***

3. The examiner has received and considered the drawings filed on August 6, 2007. These drawings are acceptable.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1, 3-6, 8-12, 14 and 16-24 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1,3-6, 8-12, 14, 17, 18, 19, 21-23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Romero et al. (hereinafter Romero), U.S. Patent Pub. No. 2002/0129127, in view of Colby et al. (hereinafter Colby), U.S. Patent No. 6,006,264.

7. In considering claims 1, 10, and 12, Romero discloses a method, a computer readable product embodied on computer readable media readable by a computing device, and apparatus for configuring a load balancer (130) for dispatching client (100) requests amongst a plurality of servers (160-162), said method, computer readable product, and apparatus comprising: storing a configuration file (300) in a local memory of each one of said plurality of servers, each of said configuration files containing parameters (330) including variables to be applied for configuring a load balancing scheme for said plurality of servers, (pg. 4, par.'s 0031 and 0033); and obtaining said configuration files from each of said plurality of servers, (pg. 4, par. 0031); and configuring a load balancing algorithm by said load balancer in accordance with said parameters that were read out of each corresponding configuration file, (pg. 4, par. 0031, 0032).

Although the teachings of Romero disclose substantial features of the claimed invention, they fail to expressly disclose: the load balancer obtaining the configuration files from each of the plurality of servers...by selecting... a next one of the plurality of servers, sending a request across a corresponding network from the load balancer to the next one of the plurality of servers and receiving either a corresponding configuration file or an error message from the next one of the plurality of servers, and validating parameters in said corresponding configuration file.

Nevertheless, Romero does disclose an agent (170) that may reside in the load balancer, or in the servers, or a combination of both, wherein the agent obtains configuration files from each of the plurality of servers, (pg. 2, par. 0016. pg. 4, par. 0031). Furthermore, load balancers obtaining information from each of a plurality of servers...by selecting... a next one of the plurality of servers, sending a request across a corresponding network from the load balancer to the next one of the plurality of servers and receiving either corresponding information or an error message from the next one of the plurality of servers, and validating the information was well known in the art at the time of the present invention. In analogous teachings, Colby exemplifies this where Colby discloses load balancers obtaining information from each of a plurality of servers...by selecting... a next one of the plurality of servers, sending a request across a corresponding network from the load balancer to the next one of the plurality of servers and verifying the health of each server, (col. 7, lines 4-12, col. 8, lines 19-23).

Thus, if not implicit in the teachings of Romero, it would have been obvious to one of ordinary skill in the art that the teachings of Romero could be modified with the

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teachings of Colby to expressly disclose the load balancer obtaining the configuration files from each of the plurality of servers...by selecting... a next one of the plurality of servers, sending a request across a corresponding network from the load balancer to the next one of the plurality of servers and receiving either a corresponding configuration file or an error message from the next one of the plurality of servers, and validating parameters in said corresponding configuration file. Not only would this have been a design choice, such a modification would have advantageously provided an intelligent load balancer that would be able to route client requests more efficiently based on information obtained from the servers by the load balancer, (Romero, pg. 2, par. 0016, Colby, col. 8, lines 23-25).

8. In considering claims 3, 11, and 21, it is inherent in the teachings of Romero that each of said configuration files has a file path and name in accordance with a standard file path and naming protocol, (pg. 4, par. 0033).

9. In considering claims 4, 17, and 22, Romero discloses said parameters provided in at least one of said configuration files comprises content-based routing rules, (pg. 4, par. 0031).

10. In considering claim 5, it is inherent in the teachings of Romero that said content-based routing rules comprise a URL mask, (pg. 2, par. 0018).

11. In considering claims 6 and 18, Romero discloses said parameters of at least one configuration file comprise at least one of time-of-day rules, session affinity rules, cookie affinity rules, server health information and a link to said server health information, (pg. 4, par.'s 0031 and 0032).

12. In considering claim 8, Romero discloses said plurality of servers comprise a server farm (200) coupled to receive client requests via the Internet (120), (pg. 3, par. 0026).

13. In considering claim 9, although the teachings of Romero disclose substantial features of the claimed invention, they fail to expressly disclose: said configuration files are stored in one of an HTML or XML file format.

Nevertheless, Romero does disclose said plurality of servers may be HTML servers, (pg. 2, par. 0018).

Thus, it would have been readily apparent to one of ordinary skill in the art that the teachings of Romero provide a means for said configuration files to be stored in one of an HTML or XML file format. Storing said configuration files in one of an HTML or XML format would have advantageously and efficiently allowed the load balancer to obtain configuration files utilizing the same protocol that clients use to obtain content from the servers, (pg. 2, par. 0018).

14. In considering claims 14, 19, and 23, Romero further discloses polling each one of said plurality of servers for said configuration file pertaining to each of said servers, (pg. 4, par. 0031); and configuring the load balancing algorithm based on said parameters in said configuration files, (pg. 4, par. 0031).

Although the teachings of Romero disclose substantial features of the claimed invention, they fail to expressly disclose: initializing the load balancer by manually inputting the address information of each one of said plurality of servers, and validating each of said configuration files.

Nevertheless, Romero does disclose including the polling functionality at the load balancer, (pg. 2, par. 0016).

Thus, if not implicit in the teachings of Romero, it would have been readily apparent to one of ordinary skill in the art to modify the teachings of Romero to expressly disclose initializing the load balancer by manually inputting the address information of each one of said plurality of servers. This would have obviously disclosed one way of providing the load balancer the capability to poll the servers, (pg. 2, par. 0016, pg. 4, par. 0031). Further, if not implicit in the teachings of Romero, it would have been readily apparent to one of ordinary skill in the art that since Romero teaches polling each one of said plurality of servers for said configuration file pertaining to each of said servers, and configuring the load balancing algorithm based on said parameters in said configuration files, the teachings of Romero provide a means for validating each of said configuration files. This would have obviously made sure the



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configuration files were from an official source before utilizing the information in the files, (pg. 4, par. 0031).

15. Claims 16, 20, 24, are rejected under 35 U.S.C. 103(a) as being unpatentable over Romero in view of Colby, and further in view of Reichmeyer et al. (hereinafter Reichmeyer), U.S. Patent 6,286,038.

16. In considering claims 16, 20, and 24, although the teachings of Romero disclose substantial features of the claimed invention, they fail to expressly disclose: storing configuration files provided by a server manufacturer.

Nevertheless, storing configuration files provided by a server manufacturer was well known in the art at the time of the present invention. This is evidenced by Reichmeyer, who, in an analogous art, discloses storing configuration files provided by a server manufacturer, (col. 3, lines 7-29).

Thus, if not implicit in the teachings of Romero, it would have been readily apparent to one of ordinary skill in the art to modify the teachings of Romero to disclose storing configuration files provided by a server manufacturer. This would have advantageously preconfigured the servers in cases where the installation environment was known, (Reichmeyer, col. 3, lines 7-29).


**Conclusion**

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hassan Phillips whose telephone number is 571-272-3940. The examiner can normally be reached on Mon-Fri (8am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Wallace can be reached on 571-272-3440. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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10/9/07

  
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EBC/ART UNIT 2151